

1 Q. What is that?

2 A. A telemarketer seeking support, if you
3 will, from a verifier simply and possibly in lieu
4 of accuracy. That's how I would describe it. If
5 you say to -- please answer these questions yes
6 or I'll lose my job, you're trying to elicit
7 support from them, you're trying to elicit help,
8 rather than just the proper external service
9 they're providing, which is to verify.

10 Q. Can you give me an example, a
11 hypothetical example of what would be responsive
12 to question 9?

13 A. Certainly. So a rep fails to properly
14 represent the rates -- let's just use that for
15 example -- whatever those rates would have been.
16 And then the rep says, Now listen, they're going
17 to ask you some questions. I'll lose my job if
18 you say no on this.

19 Q. And who is the rep talking to?

20 A. The rep would be talking to the
21 customer. And saying, they're going to ask you

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1 some questions, just say yes because I'm going to
2 lose my job. Asking that the customer ignore the
3 fact that the verification will mention a
4 different rate in trying to elicit the sympathy
5 from the customer that says, I don't want you to
6 lose your job. Yeah, I'll say yes. The rep
7 says, it's not important, this is very routine,
8 very rote. It has nothing to do with what we
9 just talked about here. That's how I would
10 interpret it, something like that.

11 Q. Would it also be the case, if I
12 modified your hypothetical a tad bit, and the
13 telemarketer did not quote an improper rate, if
14 the telemarketer gave the customer the straight
15 dope but still asked that?

16 A. Oh, yeah.

17 Q. Would that still qualify?

18 A. Certainly, certainly. The way I read
19 it, the telemarketer would alert the customer of
20 a verification call forthcoming because they want
21 to make sure the person is still there. But any

1 coaching, any coaching, please answer yes or even
2 telling them what to say, I would address.

3 So what I grew to allow was the -- if
4 I'm recalling correctly -- the salesperson will
5 say that you'll be called by a verification
6 company so they can see that I'm doing my job
7 correctly. And that, I accepted. I didn't like
8 anything more leading than that. I softened I
9 guess. I thought that was fine if they said
10 that.

11 Q. What did you respond to question 9?

12 A. Question 9. "Our Telemarketers alert
13 to customers that the verifiers are there to
14 assure that the representative is doing his job
15 correctly. I have seen no examples where it
16 suggested the rep's job would be lost based on a
17 verification outcome."

18 Q. What did you do to respond to question
19 9?

20 A. Again, my recollection.

21 Q. Did you do any research?

1 A. I didn't. It wasn't necessary. It
2 was not a problem.

3 Q. Did you talk to anybody else in
4 Business Options?

5 A. I'm sure not.

6 Q. And when you said, "I have seen no
7 examples," did you mean that there are no
8 examples?

9 A. Correct. Again, these could not have
10 escaped my control. They would have been brought
11 to my attention. Without question, if I didn't
12 see it, it was because it wasn't happening.

13 Q. I suppose that it's possible that it
14 was happening but it was just not brought to your
15 attention by the tape auditor or a manager
16 walking the floor. Is that possible?

17 A. I consider it's not possible. What
18 you've just described, I don't consider as
19 possible. I just don't consider our managers or
20 our tape auditor -- they would have no reason not
21 to bring it to my attention.

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1 Indeed, the problem I had, if you
2 will, was how much was brought to my attention
3 that I felt they could have handled. So we had a
4 little bit of the opposite, if you will. Go ask
5 Gene. Go ask Gene. They erred on the side of
6 caution way more than on the side of
7 carelessness.

8 Q. The managers and tape auditors?

9 A. Yes. Yes.

10 Q. Did the tape auditor listen -- I don't
11 mean to be naive about the process -- but did the
12 tape auditor listen to every single tape?

13 A. Every single tape.

14 Q. And was every single conversation
15 recorded?

16 A. Not every single conversation. Every
17 rep was recorded, if I recall correctly, for 30
18 minutes every other day or an hour every other
19 day. Or maybe 60 minutes every other day or
20 something like that, or that's what the math
21 ended up being. They would never know when.

1 We actually took steps to ensure there
2 was no way for it to become known, where we would
3 make sure our tape auditor -- we moved the office
4 of our tape auditor so not even eye contact would
5 be made. Do you know what I mean? Not even
6 potential for a rep to become self-conscious,
7 such as, I think he's looking at me. We didn't
8 give them a chance. We thought of everything.

9 And then, yeah, there's no way
10 electronically to tell. There was no difference
11 in your headset, for example. We did everything
12 we could to make sure these people didn't have
13 any idea they were being taped. And, yes, the
14 tape auditor listened to every tape that we
15 taped.

16 Q. And you have no memory of anyone every
17 reviewing your response to question 9?

18 A. I don't have any knowledge of that.

19 Q. And you didn't speak to anyone about
20 your response to question 9?

21 A. Didn't speak to anybody, correct.

1 Q. And did you consider this response to
2 be accurate and complete?

3 A. Yes, sir.

4 Q. Will you please read question 10 into
5 the record.

6 A. I will. And I'm horrified to say I
7 didn't answer that one. Questions 10: "Has BOI
8 or its agents found any instance since April 1,
9 2002, in which BOI telemarketing employees
10 changed the customer's preferred carrier by
11 asking the customer whether he or she wanted to
12 change their preferred carrier or without
13 mentioning the name of Business Options? If so,
14 provide any documents related to the discovery of
15 this practice and describe each instance in
16 detail, including but not limited to date,
17 customer name, customer telephone number, content
18 of the conversation."

19 Q. Did you, at the time you read question
20 10, did you understand what kind of information
21 it called for?

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1 A. Sure.

2 Q. And what was that?

3 A. We are a long distance provider called
4 Business Options. That's the name of the
5 product, and it's important that our
6 representatives sell the product we're selling,
7 and not some other product or be vague about our
8 product. We drill that into them pretty hard in
9 the training session. We all made very sure that
10 they knew that, and they didn't get up there and
11 try to be selling something else, you know. We
12 used the example of cars. You're not selling
13 this model car. You're selling this model car,
14 and we wanted them to know this.

15 Q. And you did not respond to this
16 question?

17 A. I did not respond to this question. I
18 have no explanation why. I can tell you that I
19 would have been happy to. I don't know why no
20 one brought it to my attention. This is the
21 first I've seen it, and it was an absolute

1 oversight. I'll tell you this: My office was
2 Grand Central Station and I probably just got
3 distracted.

4 I'm sorry that Shannon wouldn't have
5 sent it back to me and said, Gene, what did you
6 do? You missed a question here. Because I would
7 have been happy to plug it in. I had two boxes
8 of Kleenex on my desk just because of employees
9 coming to my office with personal matters. I'm
10 just describing to you the kind of traffic I had.
11 So this is clearly my spacing it out, obviously,
12 in the course of my crazy day. I'd be happy to
13 answer it now.

14 Q. Ms. Dennie did not come back to you
15 and ask for a response to question 10?

16 A. No. And I don't know why. It's
17 pretty obvious when you look at it that it wasn't
18 answered.

19 Q. Did Kurtis come back to you and --

20 A. Obviously not. I would have been
21 happy to have retyped it on the computer. It

1 only takes a moment.

2 Q. Did you have any discussions with
3 anyone about question 10?

4 A. Not a word.

5 Q. Did you even look into whether or not
6 to respond to this question?

7 A. Of course. I read it. I even recall
8 it. And there's nothing to not respond to.
9 Again, it must be the -- there were gags about
10 how many half written dispatches I would have
11 because, you know -- Gene, can I come in and talk
12 to you? It was a nightmare. I don't even know
13 that I was an asset to the company for being so
14 amenable sometimes. So anyway, it was just the
15 fact that there was some distraction, obviously.

16 Q. But you did not intend to --

17 A. No, of course not.

18 Q. Well, let me ask you the question.

19 A. Okay. Sorry.

20 Q. You did not intend to leave the
21 response to question 10 out of your responses?

1 A. Absolutely did not intend to. In
2 fact, I was checking to see if maybe I left out
3 11 and misnumbered that one. But I think it's
4 clear that it was 10 that didn't get answered. I
5 absolutely did not intend to not answer that
6 question.

7 Q. Will you please read question 11 into
8 the record.

9 A. Certainly. "How many telemarketers
10 have been dismissed for engaging in any of the
11 practices mentioned in paragraph 7 through 10.
12 Provide any documents related to discipline
13 actions taken and describe each instance in
14 detail including but not limited to, name,
15 address, and telephone number of the
16 telemarketer, date of the occurrence, customer
17 name and telephone number, nature of the
18 practice."

19 Q. And what did that question call for?

20 A. Just specifically, who did we can over
21 the various matters described here.

1 Q. Described in questions 7 through 10?

2 A. Yes. Correct.

3 Q. What was your response? Will you
4 please read that into the record.

5 A. Yes. "We terminated a Melissa Grissom
6 [spelled phonetically] in May 2002 for violations
7 that most closely approximate what has been
8 described in your questionnaire. This woman, in
9 fact, sought to be rehired in late October but
10 this was declined."

11 Q. And then that's the end of your
12 response?

13 A. Correct.

14 Q. Why was Ms. Grissom terminated?

15 A. I'm trying to remember exactly. I
16 terminated her personally. I did not hear the
17 tape. I got a report of the tape and it was a --
18 it was kind of little bit of both of that which
19 is mentioned in 10 and 7, I think, if I'm
20 recalling correctly. She was just
21 misrepresentative, just did not really come out

1 and say who she was or something. I can't
2 remember exactly, but it was just if you listen
3 to it -- do you know what I mean? It wasn't one
4 specific item. She just didn't properly
5 represent herself as being from this company,
6 selling this product.

7 And I called her in. I got the
8 report. It was written, and the tape came
9 because I did have the tape with me at the time.
10 I said, Listen, this is what's written here, this
11 is what I'm being told by the tape auditor. If
12 you said this, you're gone.

13 And she denied and denied. So I said,
14 Let's listen to the tape. So I called for the
15 tape -- I was new at the company at the time. So
16 I said, Let's find out now while we're talking.
17 I opened the machine and put the tape in and I
18 was about to push play.

19 She said, All right. I did it. So I
20 never heard the tape. Right up to the time I'm
21 about to push play, Fine, I did it.

1 So I said, Okay, we can't keep you
2 here if you did this. It was just, I think,
3 violating point 10 was the best description
4 besides other things, I think. But that would be
5 the closest example according to this list here.

6 Q. Did you also have a recollection that
7 according to the report, that this situation
8 would have been responsive to question 7?

9 A. I seem to -- oh, no. That would not
10 be correct. I don't remember. I suppose I don't
11 remember. The customer's telephone company? Not
12 outright. But it was just a gunky sale. You
13 know what I mean? I can't give you a specific.
14 It was just that she didn't follow the script,
15 promote who she was with, and sell our product.
16 She just didn't do that. And it's hard to define
17 exactly how she didn't do it, but if you heard
18 it, you'd know it. So she was terminated on the
19 spot.

20 Q. So when you responded to question 11
21 at that time, what was your understanding of

1 where Melissa Grissom's situation would have
2 applied in questions 7 through 10?

3 A. The closest that it would be, would be
4 10 as per this list. I think I recall that it
5 just wasn't enough promoting of the idea of
6 Business Options.

7 Q. Okay. Were you responsible for
8 responding to question 12 in the FCC letter?

9 A. No, sir.

10 Q. How did you know that?

11 A. I'm going by recollection. 7 through
12 11 are the questions I understood that I was to
13 answer.

14 Q. Did Ms. Dennie tell you that?

15 A. Yes. She's the only one I spoke with
16 about this. I can also -- reading it here -- can
17 assure you that this again was just not under my
18 periphery. I would have no knowledge of this.

19 Q. Were any of the documents that were
20 attached to Business Options' response responsive
21 to questions 7 through 11?

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1 A. I apologize. I didn't understand your
2 question.

3 Q. The Business Options December 9th
4 letter to the FCC that is responding to the FCC's
5 November 1st letter attaches several documents.

6 A. Right. Okay. I'm understanding you
7 now. Were these pertaining to the questions.
8 Okay. I'm going to say certainly not this one.
9 I don't even know what that is. Oh, no. Of
10 course. Okay. Well, yes, to some degree this is
11 what Melissa, for example, violated. The
12 standard sales pitch would be a broad generic
13 description of her noncompliance. So that would
14 apply to some degree. Objection Handlings would
15 not. But, yeah, the standard sales pitch,
16 certainly.

17 Q. Did you have any conversations with
18 anyone at the FCC about your responses to the
19 November 1st letter from the FCC before today?

20 A. You are the first FCC individual I
21 have spoken to per my recollection.

1 Q. Lucky you.

2 MR. HAWA: Now make sure you get that
3 Trent said that.

4 MR. SHOOK: Other than me.

5 THE WITNESS: That's right. I spoke
6 to you a week ago and we had a nice conversation
7 on the phone. That's right. So I guess I lied
8 to you, and this would be the second.

9 MR. SHOOK: You just didn't remember.

10 THE WITNESS: I didn't remember.

11 MR. SHOOK: There's a big difference.

12 THE WITNESS: I got it. BY MR.

13 HARKRADER.

14 Q. I will represent to you that there
15 were a couple of other letters sent by Business
16 Options to the FCC in the December 20th and 26th
17 time frame roughly. Are you aware of those
18 letters at all?

19 A. I sure am not, sir. If I was copied
20 on them or saw them, I have no recollection in my
21 mind.

1 Q. You didn't write any of those letters?

2 A. I sure don't remember doing so.

3 Q. Did there come a time when you found
4 out that the FCC had issued a Show Cause Order to
5 Business Options?

6 A. I don't know that I understand what a
7 Show Cause Order is.

8 Q. Let me show you a copy of the order to
9 which I'm referring. What this is, is an Order
10 to Show Cause and Notice of Opportunity for
11 Hearing that was released on April 7th, 2003 by
12 the FCC.

13 A. I am aware of this.

14 Q. Have you seen this Show Cause Order
15 before?

16 A. Yes, sir.

17 Q. When was that?

18 A. Well, I'm answering you with
19 certainty. Let me qualify that. I believe that
20 I saw this come over the fax. Would you have
21 faxed this?

1 Q. I believe someone at the FCC would
2 have faxed this.

3 A. Let me say it to you this way: While
4 in the office of Avatar where I had my new office
5 and my new position, I was present when a lengthy
6 fax from the FCC came in. And I recall it simply
7 because I recall how it grabbed Shannon Dennie's
8 attention who was in my vicinity. I didn't read
9 it. I didn't see it. It had nothing to do with
10 my job. And frankly, I couldn't be bothered.
11 Time-wise, I was very involved with what I was
12 doing.

13 But being easy to talk to and I guess
14 at least in Shannon's eyes, I was the ranking
15 individual at the time -- Kurtis was out of town
16 -- she asked me what she should do. No. That's
17 too strong. Her concern was evident, and I just
18 remember somehow she got my attention over it. I
19 don't remember exactly. But I told her, If you
20 have a question, call Kurtis. So that was the
21 extent of it.

1 Q. Is it your recollection that you
2 received this around April 7th?

3 A. The timing sounds right. I frankly
4 don't recognize it at all, because I really
5 didn't focus on it. But the date, more than
6 anything else, tells me what that this must be
7 it.

8 Q. And at that time you were not working
9 as vice president of administration?

10 A. That's correct.

11 Q. You were vice president of marketing?

12 A. And not for Buzz Telecom but for
13 Avatar Enterprises.

14 Q. Do you recall what Shannon Dennie said
15 to you?

16 A. Oh, I sure don't. I was knee deep in
17 a 54 page prospectus for a publishing outline. I
18 was just -- I mean, I can't tell you how many
19 times I heard, Gene, what do you think I should
20 do? It rings in my ears at night. So I said
21 something like, Shannon, get Kurtis on the phone

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1 or something. You know what I mean? That was
2 really the whole of it. It actually took longer
3 to say it to you, I think, than to execute. It
4 wasn't my responsibility.

5 Q. But you didn't read the Show Cause
6 Order?

7 A. No, I did not.

8 Q. And you weren't responsible for any of
9 the efforts that Business Options or Buzz or
10 Avatar took to respond to it in any way?

11 A. Absolutely none. No connection to it.
12 Only learned about it very much after the fact,
13 the specifics anyway. It was evident that
14 something was happening, very significant matter
15 for a company. And so naturally you learn
16 something. But it was so removed from my role of
17 responsibility that it was in passing, a water
18 cooler discussion, rather than anything that had
19 to do with my position. I said water cooler
20 discussion, but you get the point.

21 Q. To this day, have you read the Show

1 Cause Order?

2 A. No, sir.

3 Q. Were you aware at any time that one of
4 the responses you gave or actually the response
5 that you did not give, specifically the response
6 to question 10 that you omitted, was part of the
7 Show Cause Order?

8 A. I was not aware until you just said it
9 and that horrifies me.

10 Q. Did you ever talk with Kurtis about
11 the Show Cause Order?

12 A. Briefly on a couple of occasions, in
13 passing, very few specifics.

14 Q. Do you remember when those
15 conversations occurred?

16 A. This will be funny to tell you, but I
17 don't have my position at the company because of
18 this matter. So I learned then and that would
19 be, I think, June sometime.

20 Q. And you had a couple of conversations
21 with respect to your ongoing employment at

1 Avatar?

2 A. Correct.

3 Q. And that was the only time you had a
4 conversation with Kurtis in which you discussed
5 the Show Cause Order?

6 A. There would be one earlier
7 conversation where I think I said, How's it
8 going? This would be earlier. And he's really
9 very low-keyed anyway, and as I'm not in the loop
10 -- we're not close. He's a nice man and we work
11 together but he wouldn't have any reason to give
12 me specifics.

13 I said, Can I do anything to help? I
14 write a mean letter, a good letter. Not mean as
15 in angry. I said, Is there anything I could be
16 doing?

17 He said, No, we've got it handled.
18 That would be it. Five minutes. No, not five,
19 maybe a three-minute exchange. Again, you could
20 sense that something was happening and I didn't
21 get any specifics.

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1 Q. I have a couple of questions where I
2 want to close the loop on some things that we
3 discussed earlier and then we will take a quick
4 break. We may have one or two more questions for
5 you. Probably will. So we're close to the end
6 of this.

7 A. Fine. Great.

8 Q. You mentioned earlier that when you
9 were doing your training, one of the things you
10 did was data entry?

11 A. Correct.

12 Q. What kind of data were you entering?

13 A. Oh, just the simple mechanics of the
14 -- it's really very simple. It's all just
15 numbers so everybody -- their address, their
16 name, their birth date is an important part of
17 their code. It's what puts them on the
18 electronic file, if you will, what makes them a
19 customer. I don't remember more than that. It
20 took about -- well, I mean it took me three
21 minutes a customer. It takes a good -- I suppose

1 you could do it in one minute if you're pushing.

2 Q. So this is the information about a
3 customer after Business Options had already
4 signed them up?

5 A. Correct.

6 Q. How long did you do data entry?

7 A. I had to do ten as part of my
8 training. I think I knocked that out in a day.

9 Q. You mentioned earlier today that you
10 had listened to a tape of a verifier and that
11 that verifier was later terminated?

12 A. Correct.

13 Q. Do you remember when that was?

14 A. I can't say for certain. It was in
15 the later half of my tenure there. It was very
16 routine matter. I can't tell you for sure.

17 Q. Did you also mention that that
18 verifier was tardy?

19 A. As per my recollection this was just
20 a -- I just don't recall specifically. I do seem
21 to remember other problems.

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